

### **REMARKS**

Claims 1-6, 12, 13, and 16 are currently pending on the merits and under examination. Claims 7-11, 14, and 17-21 have been withdrawn without prejudice. Claim 15 has been canceled without disclaimer or prejudice. Applicants reserve the right to file one or more continuation or divisional applications to any withdrawn or canceled subject matter. Claims 1-6, 12, 13, and 16 have been amended to more clearly recite the claimed invention. Claim 1 has been amended to recite that the claimed invention is an isolated polynucleotide. Claims 2-6, 12, 13, and 16 are amended to reflect proper antecedent basis to claim 1 from which they directly or indirectly depend. Support for the amendments can be found in the application as-filed. No new matter has been added by the amendments.

#### **I. Priority**

The Office Action states that claims to the benefit of a prior-filed application will not be entered until a certified English translation of the priority documents is submitted. Applicants submit herewith a certified English translation of the priority document as Exhibit A.

#### **II. Specification**

The Office Action objected to the brief description of drawings for not including a description of all the parts in some Figures. Applicants respectfully submit that the amendments to the specification have overcome the objection.

The Office Action also objected to the specification for containing sequence listings, which are not identified by a SEQ ID No. The specification has been amended to address this objection. A new sequence listing is filed concurrently with this paper.

It is therefore respectfully requested that the objections to the specification be withdrawn.

#### **III. Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-6, 12, 13, 15, and 16 are rejected under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter regarded as the invention.

The Office Action alleges that the use of term "gene" requires that nucleotide sequences include an expression control element. Claims 1-6, 12, 13, 15, and 16 have been amended to

recite an isolated polynucleotide sequence. It is therefore respectfully requested that the rejection of claims 1-6, 12, 13, 15, and 16 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claim 6 is rejected under 35 U.S.C. § 112, second paragraph, for allegedly reciting a term without sufficient antecedent basis. Claim 6 has been amended to overcome the rejection. It is therefore respectfully requested that the rejection of claim 6 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claim 6 is further rejected under 35 U.S.C. § 112, second paragraph, for reciting a vague and indefinite term. The Office Action alleges that the term "some epithelium cancers" is vague and indefinite. Claim 6 has been amended to overcome the rejection. It is therefore respectfully requested that the rejection of claim 6 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 15 and 16 are rejected under 35 U.S.C. § 112, second paragraph, for allegedly reciting a promoter that is insufficiently defined. Claim 15 has been canceled without prejudice. Claim 16 has been amended to recite that the promoter is SEQ ID No: 8. It is therefore respectfully requested that the rejection of claims 15 and 16 under 35 U.S.C. § 112, second paragraph, be withdrawn.

#### **IV. Rejection Under 35 U.S.C. § 112, First Paragraph**

Claims 1-6, 12, and 13 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action alleges there is insufficient written description as to identify a gene with 90% homology. Without acquiescing to the propriety of the rejection, claim 1 has been amended to recite SEQ ID Nos. 1, 2, 3, and 6 only. The Office Action acknowledges there is sufficient written description for SEQ ID Nos. 1, 2, 3, and 6.

It is therefore respectfully requested that this rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 1-6, 12, 13, 15, and 16 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled by the specification. Specifically, the Office Action alleges there is not enablement for 90% homology to a gene. Without acquiescing to the propriety of the rejection, the claims have been amended to delete reference to 90% homology. The Office Action acknowledges that SEQ ID Nos. 1, 2, 3, and 6 are enabled by the specification.

It is therefore respectfully requested that this rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

**V. Rejection under 35 U.S.C. § 101**

Claims 1-6, 12, 13, 15, and 16 are rejected under 35 U.S.C. § 101, for claiming non-statutory subject matter. The Office Action alleges that the claims fail to distinguish themselves from naturally occurring genes. The claims, as amended, recite “isolated polynucleotides.” Applicants therefore respectfully request that the rejection be withdrawn.

**VI. Rejection under 35 U.S.C. § 102(b)**

Claims 1, 2, and 6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Shao *et al.* (Genbank Accession No AAP14034, submitted 8/11/2003) (“Shao”). The Office Action alleges that Shao teaches SEQ ID No: 4 of the claimed invention.

Applicants respectfully submit that the sequence disclosed by Shao was submitted in August 11, 2003. This date is after the date from which the present application claims priority. Indeed, the present application claims priority to December 24, 2002. The Office Action acknowledged this date and required submission of an English translation of the document priority is claimed to. A certified English translation is submitted herewith. Applicants respectfully request that the rejection be reconsidered and withdrawn.

It is therefore respectfully requested that this rejection under 35 U.S.C. § 102(b) be withdrawn.

Claims 1 and 5 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Shao and Zhou (Genbank Accession No. AAO84265, submitted 4/21/2003) (“Shou and Zhou”). The Office Action alleges that Shao and Zhou teach SEQ ID No: 7 of the claimed invention.

Applicants respectfully submit that the sequence disclosed by Shao and Zhou was submitted in April 21, 2003. This date is after the date from which the present application claims priority. Indeed, the present application claims priority to December 24, 2002. The Office Action acknowledged this date and required submission of an English translation of the document priority is claimed to. A certified English translation is submitted herewith. Applicants respectfully request that the rejection be reconsidered and withdrawn.

It is therefore respectfully requested that this rejection under 35 U.S.C. § 102(b) be withdrawn upon receipt of the certified translation.

Claims 1, 6, 12, and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kato *et al.* (WO/2000/05367) ("Kato"). The Office Action alleges that Kato teaches SEQ ID No: 5 of the claimed invention.

Without acquiescing to the propriety of the rejection, Applicants have deleted reference to SEQ ID No: 5 from claim 1. Accordingly, the rejection by Kato is therefore moot and should be withdrawn.

Claims 15 and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Shao *et al.* (Genbank Accession No. AY198226, submitted 8/11/2003). The Office Action alleges that Shao *et al.* teach SEQ ID No: 8 of the claimed invention.

Applicants respectfully submit that the sequence disclosed by Shao was submitted in August 11, 2003. This date is after the date from which the present application claims priority. Indeed, the present application claims priority to December 24, 2002. The Office Action acknowledged this date and required submission of an English translation of the document priority is claimed to. A certified English translation is submitted herewith. Applicants respectfully request that the rejection be reconsidered and withdrawn.

It is therefore respectfully requested that this rejection under 35 U.S.C. § 102(b) be withdrawn.

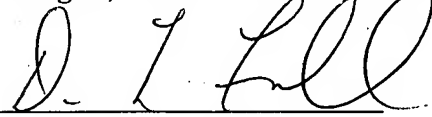
## **VII. Conclusion**

The foregoing amendments and remarks are being made to place the application in

condition for allowance. Applicants respectfully request entry of the amendments, reconsideration and the timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, she is invited to telephone the undersigned at their convenience.

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: **February 12, 2008**  
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Respectfully submitted,  
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